IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

CONTEMPT PETITION NO. 431 OF 1999

Shaikh Abdul K.A. Momin. .. Petitioner.

Vs.

Babibai Kesherimal Jain /Oswal & ors.

.. Respondents.

Mr.S.R. Page holding for S.G. Page for Petitioner.

Mrs. A.R.S. Baxi & Mr. S.B. Deshpande for Respondent Nos. 1 to 4.

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CORAM :B.H. MARLAPALLE,J.
DATED : 11TH APRIL,2005.

P.C.:

1. Heard Mr. Page, learned counsel for the petitioner. Writ Petition No.240 of 1998 was disposed of by this court on the basis of the undertaking furnished by the petitioners therein i.e. Chunibai Maganlal Jain and Jagdish Maganlal Jain. As per the said undertaking the petitioners had agreed to handover the vacant possession of the suit premises on or before 27.7.1998 to the present petitioner. However, Sabibai Kesrimal Jain alongwith her three sons had filed Regular Civil Suit No.75 of 1998 and prayed for declaration that

the decree passed in Civil Suit No.207 of 1991 and confirmed in Civil Appeal No.415 of 1994 be declared as illegal, null and void. The petitioner contends that the present respondents are the family members of the persons who furnished an undertaking in Writ Petition No.240 of 1998 have acted in breach of the said undertaking and that too wilfully. Admittedly, the present respondent Nos. 1 to 4 have not furnished any undertaking before this court and they do not appear to be the family members of the respondent Nos. 5 to 7. The name of the respondent No.7 has been deleted from this proceeding as per the order of this court dated 7.11.2001. The respondent Nos. 5 and 6 cannot be held guilty for contempt on the ground that the respondent Nos. 1 to 4 have filed regular civil suit and prayed for declaration that the decree is illegal. The contempt petition is therefore, misconceived. There is no case made out prima facie to take cognizance.

2. Contempt Petition is therefore, rejected summarily.

(B.H.MARLAPALLE, J.)